



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

For Meeting of: 08-14-03

MEMORANDUM

AUG 07 2003

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Acting Associate General Counsel

Mai T. Dinh
Acting Assistant General Counsel

Richard Ewell
Attorney

SUBJECT: Draft Notice of Proposed Rulemaking on Multicandidate Political
Committees and Biennial Contribution Limits

Attached is the draft Notice of Proposed Rulemaking addressing issues related to the status of multicandidate political committees, the limits on contributions by persons other than multicandidate committees to national party committees, and the attribution of contributions by individuals with respect to biennial contribution limits.

Recommendation:

The Office of the General Counsel recommends that the Commission approve the attached NPRM for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 102 and 110**

3 [Notice 2003 - >]

4 **Multicandidate Committees and Biennial Contribution Limits**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of Proposed Rulemaking.

7 **SUMMARY:** The Federal Election Commission requests comments on proposed
8 changes to its rules covering three areas: (1) multicandidate
9 political committee status, (2) annual contributions by persons
10 other than multicandidate committees to national party committees,
11 and (3) biennial contribution limits for individuals. The proposed
12 changes would clarify the qualifications for multicandidate
13 political committee status and require a political committee to
14 notify the Commission when it has qualified as a multicandidate
15 committee. The proposed changes would also update the limit on
16 contributions from persons other than multicandidate committees
17 to national party committees. In addition, the proposed changes
18 would adjust the attribution of contributions to candidates from
19 individuals under the biennial limits. No final decisions have been
20 made by the Commission on any of the proposed revisions in this
21 Notice. Further information is provided in the supplementary
22 information that follows.

DATES:

Comments must be received on or before September 19, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 1, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES:

All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to multicand03@fec.gov and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment

1 period. The hearing will be held in the Commission's ninth floor
2 meeting room, 999 E Street N.W., Washington, D.C.

3 **FOR FURTHER**
4 **INFORMATION**
5 **CONTACT:**

Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr.
6 Richard T. Ewell, Attorney, 999 E Street N.W., Washington, DC
7 20463, (202) 694-1650 or (800) 424-9530.

8 **SUPPLEMENTARY**

9 **INFORMATION:** The Commission is considering changes to several separate rules to
10 address three different issues. First, the Commission proposes changes to its rules
11 regarding the certification requirements and contribution limits of a political committee
12 that qualifies as a multicandidate committee. Second, the Commission proposes updating
13 the annual limit on contributions from persons other than multicandidate committees to
14 national party committees in order to conform to the change made by Congress in the
15 Bipartisan Campaign Reform Act of 2002 ("BCRA"). Finally, the Commission proposes
16 corrections to its rules on the annual limit on aggregate individual contributions in light of
17 BCRA. These proposed rules would implement the provisions of the Federal Election
18 Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. 431 et seq.

19 **I. Proposed changes to 11 CFR 102.2, 110.2 Multicandidate committee status**

20 **A. Proposed 11 CFR 110.2 – Contributions by multicandidate political committees**

21 Section 110.2 sets forth contribution limits for multicandidate political
22 committees in accordance with the limits established by 2 U.S.C. 441a(a)(2). Section
23 441a(a)(4) of the FECA provides that, "the term 'multicandidate committee' means a
24 political committee which has been registered with [the Commission or Secretary of the

1 Senate] for a period of not less than six months, which has received contributions from
2 more than 50 persons, and except for any State political party organization, has made
3 contributions to 5 or more candidates for Federal office.” 2 U.S.C. 441a(a)(4). On the
4 basis of this statutory provision, the Commission’s rules at 11 CFR 100.5(e)(3) define a
5 “multicandidate committee” as a political committee meeting these three requirements.

6 FECA, prior to BCRA, provided significantly higher limits on contributions to
7 candidates for political committees with multicandidate status than for those without that
8 status (\$5,000 per election versus \$1,000). BCRA raised and indexed for inflation the
9 contribution limit for non-multicandidate committees (to \$2,000 per election), and due to
10 the inflation adjustment such limit may eventually become higher than the limit imposed
11 on multicandidate committees. See 2 U.S.C. 441a(c). Thus, this contribution limit itself
12 one day may create a substantial disincentive for attaining multicandidate political
13 committee status.

14 In addition, the limit on contributions to national party committees from
15 multicandidate committees is \$15,000 per year (as it was prior to BCRA), yet BCRA
16 increased the limit on contributions to the same national party committees from non-
17 multicandidate committees to \$25,000 per year. 2 U.S.C. 441a(a)(2)(B) and (1)(B).
18 Furthermore, the contribution limit for multicandidate committees is not indexed for
19 inflation, which means that over time the current \$10,000 difference in the contribution
20 limit to national party committees will increase. 2 U.S.C. 441a(c).

21 These statutory changes have raised the issue of whether political committees may
22 opt out of multicandidate committee status. The Commission preliminarily concludes
23 that the definition of “multicandidate committee” in 2 U.S.C. 441a(a)(4) means that a

1 political committee becomes a multicandidate committee by operation of law, not
2 committee choice. Consequently the Commission proposes the addition of a sentence to
3 11 CFR 110.2(a) to state that a political committee automatically becomes a
4 multicandidate committee at the time it satisfies the six-month waiting period, receives
5 contributions from fifty or more contributors, and makes contributions to five or more
6 candidates.

7 In the alternative, the Commission seeks comments on whether multicandidate
8 political committee status may be considered optional. Commenters addressing this
9 alternative are requested to provide the legal basis that would support this interpretation
10 of 2 U.S.C. 441a(a)(4). Please note that the wording of the proposed rule in 11 CFR
11 110.2(a) does not implement this alternative.

12 B. Proposed 11 CFR 102.2(a)(3) – Certification of multicandidate status

13 To monitor compliance with the contribution limits, the Commission has required
14 multicandidate political committees to file FEC Form 1M with the Commission to certify
15 that they satisfied the criteria described above for becoming multicandidate political
16 committees. Specifically, current 11 CFR 102.2(a)(3) requires that this certification be
17 filed before a political committee may avail itself of the multicandidate committee
18 contribution limits.

19 The Commission proposes to amend 11 CFR 102.2(a)(3) to eliminate the
20 requirement that a political committee file Form 1M with the Commission before making
21 any contributions under the increased contribution limits with respect to candidates in 11
22 CFR 110.2(b). Instead, section 102.2(a)(3) would specify that a political committee must
23 certify its status as a multicandidate committee within ten days of satisfying the

1 requirements of 11 CFR 100.5(e)(3). This certification provides clear notice of the
2 political committee's status to the Commission and to recipients of contributions from the
3 committee. The ten-day period corresponds to the usual time allotted for a political
4 committee to report any changes to its Statement of Organization. See 11 CFR
5 102.2(a)(2). Thus, failure to file the form within the requisite time period would be a
6 violation of the reporting requirements of 2 U.S.C. 434. The Commission seeks
7 comments on how it should address a failure to file the certification of multicandidate
8 status. Specifically, how should the Commission address a situation where a political
9 committee qualifies for multicandidate status, does not certify its status within ten days,
10 but makes a contribution over \$2,000 to a candidate for Federal office? The Commission
11 also seeks comments on what certification process, if any, should be used if the
12 Commission adopts an alternative approach and allows multicandidate status to be
13 optional at the choice of the committee.

14
15 **II. 11 CFR 110.1 Conforming change to contributions by persons other than**
16 **multicandidate political committees**

17 In section 307(a)(2) of BCRA, Congress raised the annual aggregate limit on
18 contributions by persons other than multicandidate committees to national political party
19 committees from \$20,000 to \$25,000. 2 U.S.C. 441a(a)(1)(B). The Commission
20 proposes to revise the corresponding regulation in 11 CFR 110.1(c)(3) to reflect this
21 statutory change.

22
23 **III. 11 CFR 110.5 Aggregate biennial contribution limitation for individuals**

1 BCRA amended the provisions in the Act that limit the total amount of
2 contributions that may be made by individuals. Section 441a(a)(3) of the FECA
3 previously permitted individuals to make no more than \$25,000 in aggregate
4 contributions per calendar year. This provision was revised by BCRA to establish new
5 biennial aggregate limits that permit individuals to make up to \$95,000 in contributions,
6 including up to \$37,500 in contributions to candidates and their authorized committees,
7 and up to \$57,500 in contributions to any other political committees. 2 U.S.C.
8 441a(a)(3)(A) and (B). The \$57,500 aggregate contribution limit contains a further
9 restriction in that no more than \$37,500 of this amount may be given to committees that
10 are not the political committees of national political parties. 2 U.S.C. 441a(a)(3)(B).
11 Regulations implementing these changes were issued as part of the rulemaking entitled
12 "Contribution Limitations and Prohibitions." See Contribution Limitations and
13 Prohibitions; Final Rules, 67 FR 69,928 (November 19, 2002). Previously, 2 U.S.C.
14 441a(a)(3) also provided that, for the purposes of the annual limitation, any contribution
15 made to a candidate "in a year other than the calendar year in which the election is held
16 with respect to which such contribution is made, is considered to be made during the
17 calendar year in which such election is held." BCRA deleted this language from the Act.
18 However, the Commission retained 11 CFR 110.5(c), which specifically addressed
19 contributions made in a non-election year. The proposed rules would amend section
20 110.5(c) to delete the current language and to replace it with language affirmatively
21 stating that for the purposes of the biennial contribution limits in 11 CFR 110.5 (which
22 are set forth in paragraph (b)), a contribution to a candidate will be attributed to the two-
23 year period in which the contribution is actually made, regardless of when the election

1 will be held. For example, for the purposes of the biennial limit, a contribution made in
2 2004 to a candidate in a 2006 Senate race would be attributed to the individual's limit for
3 the 2003-2004 period. Similarly, a contribution made in 2005 to a candidate in the 2008
4 presidential race would be attributed to the individual's limit for the 2005-2006 period.
5 In addition, a contribution made during 2007 to retire debt from a 2006 House election
6 would be attributed to the individual's two-year limit for the 2007-2008 period, not for
7 the 2005-2006 period.

8 The Commission seeks comments on whether the proposed revisions are
9 consistent with BCRA. If the Commission revises its regulations in this manner, the
10 Commission seeks comment on when such revisions should become effective.

11
12 **Certification of No Effect Pursuant to 5 U.S.C. § 605(b)**

13 **[Regulatory Flexibility Act]**

14 The attached proposed rules, if promulgated, would not have a significant
15 economic impact on a substantial number of small entities. The basis for this certification
16 is that few, if any, small entities would be affected by these proposals. These rules
17 propose no sweeping changes, and are largely intended to simplify the process of
18 determining the status of political committees and the aggregate biennial amounts that
19 individuals may contribute to candidates for Federal office. Several of the proposed
20 changes are purely technical, and those few proposals that might increase the cost of
21 compliance by small entities would not do so in such an amount as to cause a significant
22 economic impact.

1 **List of Subjects**

2 11 CFR Part 102

3 Political committees and parties, reporting and recordkeeping requirements.

4 11 CFR Part 110

5 Campaign funds, political committees and parties.

6

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter 1 of title 11 of the Code of Federal Regulations as follows:

PART 102 – Registration, Organization, and Recordkeeping by Political Committees (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

2. Section 102.2 would be amended by revising paragraph (a)(3) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a) * * *

(3) A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee set forth at 11 CFR 100.5(e)(3) by filing FEC Form 1M ~~before it makes any contributions to candidates that exceed \$1000 per election~~ no later than ten (10) calendar days after qualifying for multicandidate committee status.

* * * * *

PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441, 4441f, 441g, 441h, and 441k.

4. Section 110.1 would be amended by revising paragraph (c)(3) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees
(2 U.S.C. 441a(a)(1)).

(c) *

(3) Each recipient committee referred to in 11 CFR 110.1(c)(2) may receive up to the ~~\$20,000~~\$25,000 limitation from a contributor, but the limits of 11 CFR 110.5 shall also apply to contributions made by an individual.

5. Section 110.2 would be amended by revising paragraph (a)(1) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

(a) (1) Scope. This section applies to all contributions made by any multicandidate political committee as defined in 11 CFR 100.5(e)(3). See 11 CFR 102.2(a)(3) for multicandidate political committee certification requirements. A political committee becomes a multicandidate committee whether or not the political committee has certified its status as a multicandidate committee with the Commission in accordance with 11 CFR 102.2(a)(3)

6. Section 110.5 would be amended by revising paragraph (c) to read as follows:

§ 110.5 Aggregate biennial contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

1 (c) Contributions made in a nonelection year.

2 (1) ~~For the purposes of this section, nonelection year means a year other than~~
3 ~~the calendar year in which a particular election is held.~~

4 (2) ~~For purposes of this section, any contribution to a candidate or his or her~~
5 ~~authorized committee with respect to a particular election made in a~~
6 ~~nonelection year shall be considered to be made during the calendar year~~
7 ~~in which such election is held.~~

8 (3) ~~For purposes of this section, any contribution to an unauthorized~~
9 ~~committee which is made in a nonelection year shall not be considered to~~
10 ~~be made during the calendar year in which an election is held unless:~~

11 (i) ~~The political committee is a single candidate committee which has~~
12 ~~supported or anticipates supporting the candidate; or~~

13 (ii) ~~The contribution is earmarked by the contributor for a particular~~
14 ~~candidate with respect to a particular election.~~

15 For purposes of the biennial limitation on contributions, any contribution to a candidate
16 or his or her authorized committee with respect to a particular election shall be considered
17 to be made during the two-year period described in paragraph (b)(1) of this section in
18 which the contribution is actually made, regardless of the year in which the particular
19 election is held. See 11 CFR 110.1(b)(6). This paragraph (c) also applies to earmarked
20 contributions and contributions to a single candidate committee that has supported or
21 anticipates supporting the candidate.

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Ellen L. Weintraub
Chair
Federal Election Commission

DATED _____
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